

THE  
HISTORICAL DEVELOPMENT  
OF  
PRIVATE BILL PROCEDURE  
AND STANDING ORDERS  
IN  
THE HOUSE OF COMMONS

by

O. CYPRIAN WILLIAMS, C.B., M.C., D.C.L.

*Sometime the Clerk of Committees  
House of Commons*

Volume 1

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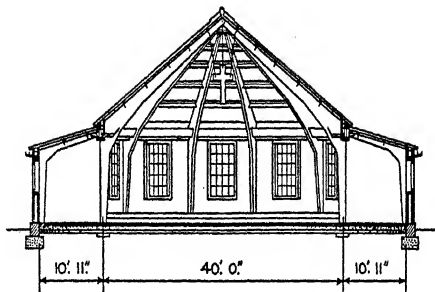
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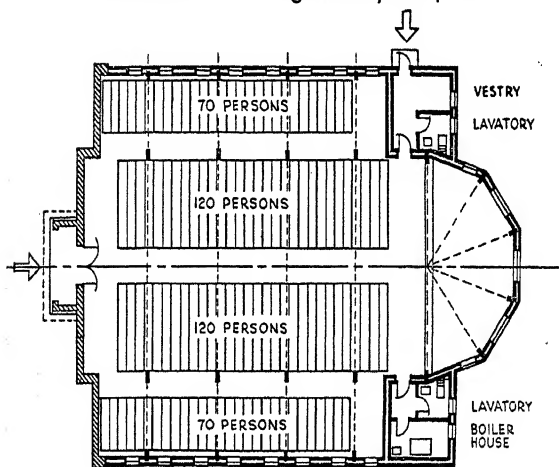
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Spring 1949



Vol. II No. 2

# PARLIAMENTARY AFFAIRS

## JOURNAL OF THE HANSARD SOCIETY

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## HANSARD SOCIETY NEWS

by STEPHEN KING-HALL

*Chairman of the Council and Honorary Director*

IF you should ever find yourself in the position of being chiefly responsible for the purchase of a house in London as headquarters for a learned society, you will be entitled to call on me for sympathy and (perhaps) some useful information. On pages 8 and 9 of Vol. I, No. I of *Parliamentary Affairs*, you will find the outline of a dream, and in that dream our Society was housed in its own headquarters. "A dream itself is but a shadow", and the Council have been exerting themselves to give that shadow the reality of substance. Thanks to the generosity of Mr. Guggenheim and the widespread response of members and others to our national appeal, we obtained enough money to justify searching for a small house. We found 11 Catherine Place, Westminster, a freehold property. Then we had to get a licence, and this quest involved an appeal to the Minister of Health. In due course we received the following letter, which should be recorded in our journal:

MINISTRY OF HEALTH,

WHITEHALL, S.W.1.

21st December, 1948.

Dear Stephen,

You wrote to me on the 2nd November appealing against the Westminster City Council's refusal to grant consent under Defence Regulation 68 CA to the use of 11 Catherine Place, S.W.1, as offices by the Hansard Society.

I have carefully considered your representations and also those of the City Council, and you will be glad to know that I have decided to allow the appeal.

The appeal is therefore hereby allowed.

Yours sincerely,

(Signed) ANEURIN.

Even now, as this issue goes to press, there are still some complications to sort out, but I am not without hope that the Hansard Society will soon have a home of its own, and will no longer be dependent upon the generosity of *National News-Letter* for offices.

And here I must tell you an extraordinary tale. I have discovered, and not only from one source, that the fact that our Society used the same address as that of a publishing company which I own led some people to suppose that there was some commercial connection between these two activities! I know we live in a suspicious world, but I confess I was reduced to amazed silence when a business man, whom I was trying to persuade to support the work of the Society, indicated to me that he was under the impression that in some way or other I made a personal profit out of the publication and sale of *Hansard*, so why should his firm support us?

**Our German Guests.** The following German politicians visited London under our auspices from 27th October to 5th November, 1948, in order to study the place of Parliament in British life:

Herr Max Emke (Christian Democratic Union), of Kiel; Herr Heinrich Hellwege (Deutsche Partie), of Neuenkirchen (Hamburg); Dr. Erich Köhler (Christian Democratic Union), of Wiesbaden; Dr. Heinz Krekeler (Free Democratic Party), of Schötmar in Lippe; Herr Herbert Kriedemann (Social Democratic Party), of Frankfurt; Herr Kühn (Social Democratic Party), of Cologne; Frau Susanne Rader-Grossmann (Social Democratic Party), of Berlin; Herr Anton Schöpke (Liberal Democratic Party), of Berlin; Herr Fritz Schmidtchen (Social Democratic Party), of Hamburg; Herr Karlfranz Schmidt-Wittmack (Christian Democratic Union), of Hamburg; Herr Johannes Siemann (Free Democratic Party), of Hanover.

I think you may be interested to read the following speech which Herr Krekeler made during the last visit at a luncheon presided over by Lord Henderson:

"My Lord, Ladies and Gentlemen: My friends have asked me to answer on their behalf the speech you have kindly made to us. But first I feel I must apologize for not addressing you in what you would style 'The King's English', but in an idiom only resembling in some ways English.

"In this time of plight and distress one looks back to the great



spiritual leaders of the past. Here we are in some sort of competition with you, because we regard your Shakespeare also as part of our own culture. When I am reading Shakespeare I think that this line in *Hamlet* is a very appropriate motto for our days:

‘The time is out of joint; O cursed spite,  
That ever I was born to put it right!’

“It seems to me our task is not only a ‘cursed spite’, but also a task great enough to fill a man’s life. We are here as representatives of different parties, but widely as our opinions may differ on some issues, that which unites us all is the earnest desire to set up democracy again in Germany. We thank you very much that you are giving us your help in this task, and I regard also this journey which was kindly organized by the Hansard Society as part of this help, and also the many occasions on which we had the opportunity to discuss our problems with representatives of the British Government.

“Further, I think I would misinterpret the purpose of this journey if I thought it aimed at taking over or suggesting to introduce some special forms of democracy to our country. I think the essential is not the form; it is the spirit in which democracy is carried out. The spirit of co-operation and arbitration which we found so often here has impressed us, and we are grateful for this experience, which will not only help us to perform our task, but which is certainly also a contribution to mutual understanding.

“For this and for all the kindness extended to us I thank you very much, in the name of my friends and in my own name.”

We are about to welcome the fourth group of German political leaders. This project would require a separate article—and it would be a very interesting one—if a full report were printed. Here I have only space to tell you that the visits are proving highly successful and are the subject of a mass of radio and Press reports in Germany, all of a very complimentary character.

**The Information Department.** This title is a misnomer. We have not yet been able to establish a properly equipped and staffed Information Department. This does not prevent the inquiries arriving in the office from members of the Society and from such bodies as—to pick out a few inquiries during the past three months—the House of Commons Library, *Time Magazine*, the National Coal Board, the Gauge and Toolmakers’ Association, the National Society of Painters, the Ford Motor Company, the Administrative Staff College, Wisconsin University, the Bureau of Current Affairs, the Royal Commission on Population, the Royal Institute of International Affairs, Government Departments,

constituency associations, and schools. We do our best to answer the questions, some of which are very complicated. I believe it to be my duty to impress upon members the toughness of the task we have undertaken in this Society and to show you clearly what the targets are. We are not "just one of those societies"; we are engaged in a day-to-day, active crusade for democracy, and part of our fighting equipment ought to be a first class Information Department. This would cost £1,500 *per annum*. We ought to have it now; we must have it by 1950. If once we can get it established, it will earn some of its keep by charging fees for lengthy and complicated inquiries.

**Our Membership.** The membership of the Society has stuck for six months at a figure in the region of 2,100, of whom approximately 300 are corporate members.

Among new members during the past three months were:

The Sun Engraving Company Ltd.; Thomas Bolton & Sons, Ltd.; The National Society of Painters (Westminster Branch); Major C. P. Mayhew, M.P.; The Ministry of Supply; New Scotland Yard; The Headmaster of Stowe; The Headmaster of Wrekin; The School Library, Eton College; The Principal, Hendon Technical College; Sir Roderick Jones, K.B.E.; The Clerk to the House of Representatives, Ceylon; The General Secretary, Y.M.C.A., Hong Kong; Professor Carl J. Friedrich (Harvard).

The latest renewal percentage is 86 per cent., which is exceedingly good. But the pause in the growth of membership is exceedingly bad, and it has happened simply because we have not had the money to send out our literature to potential members. We have a list of 60,000 names, and it would cost £500 to communicate with these persons.

**The Library.** The Library now includes the following:

Books and Pamphlets	..	..	..	300
<i>Parliamentary History</i>	..	..	..	60
<i>Hansards</i> , loaned by Brooks's	..	..	..	620
Other <i>Hansard</i> Volumes	..	..	..	600
<i>Hansard</i> Daily Parts and Weekly Editions				

The Public Relations Officer in the U.K. for the *Encyclopædia Britannica*, a member of the Hansard Society, has informed us

that a new set of the Encyclopædia will be presented to our Library.

Will anyone lend or give our Library a complete set of the *Dictionary of National Biography*?

**Parliamentary Affairs.** Nos. I to IV of our journal are now being bound, with an index, into Volume I. The price of these volumes will be 15s. net, or 10s. to members of the Society. The edition is strictly limited, and orders should be placed immediately. We are printing a limited number of copies of the Index, and these can be ordered from the office, price 1s., post free. I have no doubt whatsoever that in years to come this first volume of the only quarterly journal in the world in any language devoted to every aspect of the institution of Parliament will be much sought after and fetch a high price.

The journal has now established itself, and it only remains to do two things in order to make it a source of revenue to the Society. These are more sales to non-members and an increase in our advertising revenue. We must persuade more of our corporate members to take advertising space in its pages. The journal was founded in the summer of 1947 with £1,000 capital (provided as an interest-free loan by Mrs. King-Hall and myself, repayable at the Council's option) and at the end of the first twelve months we had used £519 of this capital in issuing approximately 8,000 copies free to our members.

**Other Publications.** Two thousand copies of the third revised edition of *Our Parliament* have been disposed of. Stocks of our pamphlets are now almost exhausted, and we would like to reprint and bind five of them up in one volume. This will involve a capital expenditure of £170. I have no doubt we shall regain all this with a profit in the course of eighteen months, but it is the same old story of lack of working capital. The price will be 6s. a volume, with the usual 33½ per cent. discount for members, and if I were sure of 500 advance orders, I would go ahead without hesitation.

The National Book League has published *Parliament*:

*A Reader's Guide*, with an introductory essay by Quintin Hogg, price 1s.: we are in a position to supply copies of this bibliography.

**Covenanting Subscriptions.** One of our members, a young student, laid information before the Council which indicated that it was in order for members to enter into seven-year Covenants for the payment of their subscriptions. This has been confirmed, and a number of members have begun to use this method, to the great financial advantage of the Society and with no extra trouble or expense to themselves. The thanks of the Society are due to the enterprising young member who drew our attention to this important new source of income. May I urge all members to enter into Covenants as their subscriptions fall due for renewal?

**Visitors from Overseas.** Within the limits of our resources we try to keep in touch with visitors to these islands who are likely to be interested in our work. During the Conference of Commonwealth Prime Ministers and the Commonwealth Parliamentary Conference in the autumn, Mr. Bailey, the Assistant Director, was able to discuss our activities with several leading parliamentarians from the Commonwealth, including the Prime Minister of Ceylon and the Speaker of the Indian Parliament. We have also been visited by a number of leading educationists from the United States. In November, 1948, a party of French journalists touring Britain under the auspices of the Central Office of Information (on behalf of the Western European Information Department of the Foreign Office) visited our office, and Mr. Bailey told them something of our work. Members of the delegation were: M. Paul Fleury (Director of *Le Courrier de l'Ouest*—Angers), M. Jean Marie Audibert (Editor of *Toulon Soir*), M. Georges Rucheton (Director of *Le Rouëque Républicain*—Rodez), M. Moisy (Director of *Liberté de Normandie*—Caen), M. Béziès (Director of the Paris Office of *Le Républicain Lorraine*—Metz), M. Wagner (Editor of *Le Républicain du Haut Rhin*), and M. Augustin Davaine (Chief leader-writer of *La Résistance de l'Ouest*).

**Overseas Societies.** *Canada.* Mr. Willson Woodside (the Director of the Canadian Society) writes: "Everyone I have spoken to agrees that the Youth Conference was a big success. A Speaker who flew 1,500 miles, in the middle of a court case, said it was the most satisfying day he had had in a long while.

"We did not fill our hall, but managed to get out over 800 students. And mind you, this was a Saturday, not a school day, and each student was there as a result of his or her own decision, as none were brought in groups by school-masters.

"The local papers all gave us half a column or more. The Canadian Press sent out a dispatch across the country. The C.B.C. broadcast excerpts, with a few words by me on the Society's aims, later the same day. And we have had editorials on our press release and from personal approaches by myself in good newspapers in all parts of Canada.

"Letters on the Conference to a score or more of leading parliamentarians have brought in some good membership. And, in general, we have made some small mark on the general public for the first time.

"If I could say that our finances had also been benefited, it would be a happy ending. Unfortunately, they have shrunk...

In connection with Mr. Woodside's last remark, I expect to make a tour in Canada from 17th February to 3rd March to raise funds for the work of the Canadian Society.

*France.* I visited Paris early in December and met M. Jacques Chapsal, Director of the Institute of Political Studies of the University of Paris, and M. André Siegfried, President of the National Foundation for Political Science. It was arranged that the National Foundation for Political Science should be our corresponding centre in France.

*Belgium.* The Belgian Society continues to progress and it is hoped soon to have a paid secretary to assist Madame Bohy, who reports that, with the extension of the suffrage to Belgian women, the women's associations are taking an interest in the work of the Society.

**Acknowledgments.** It is impossible to mention by

name all who have helped our work during the past three months, but I would specially thank Mr. Herbert Morrison, who donated to the funds of the Society his fee for writing the article on the Privy Council in the last issue of *Parliamentary Affairs*; Sir Leslie Scott, who has presented to our Library an almost complete set of the House of Commons' *Hansard* from 1911-1929; Mr. J. D. Lambert, who has addressed nearly a dozen meetings on our behalf during the past three months and has been of great assistance to the Information Department; Mrs. Barbara A. Castle, Lord John Hope, Mr. E. M. King, and Commander Maitland, who were members of a Hansard Society Brains Trust at Sandhurst in December; Major C. P. Mayhew, Parliamentary Under-Secretary of State for Foreign Affairs, and Mr. Geoffrey de Freitas, Parliamentary Under-Secretary of State for Air and Vice-President of the Air Council, who, in spite of their many official duties, spared time to try and gain increased support for our work in the business world; the Lord Chancellor (Viscount Jowitt), the Speaker of the House of Commons (the Rt. Hon. D. Clifton Brown), the Bishop of London, Lord Reith, the Minister of Civil Aviation (Lord Pakenham), the Parliamentary Under-Secretary of State for Foreign Affairs (Lord Henderson), the Home Secretary (the Rt. Hon. J. Chuter Ede), the Minister of Health (the Rt. Hon. Aneurin Bevan), the Gentleman-Usher of the Black Rod (Vice-Admiral Sir Geoffrey Blake), the Sergeant-at-Arms (Brigadier Sir Charles Alfred Howard), Mr. Kenneth Lindsay, the Clerk Assistant of the House of Commons (Mr. E. A. Fellowes), and the many others who contributed to the success of the last visit of German politicians; and to the following who provided accommodation for the German visitors, in a number of cases declining the modest sums of money available to cover out-of-pocket expenses: Mr. and Mrs. S. D. Bailey, the Hon. Mrs. Eden, Major and Mrs. C. J. Evans, Mrs. C. Corbett Fisher, Alderman and Mrs. J. Fitzgerald, Mr. and Mrs. D. W. S. Lidderdale, Mrs. Beatrice Palmer, Mr. Lancelot Spicer, Mr. and Mrs. C. E. Page Taylor, Sir Frank and Lady Tribe, and Mr. F. Whelen.

## PARLIAMENTARY INSTITUTIONS AND BROADCASTING

by SIR WILLIAM HALEY, K.C.M.G.

*(Sir William Haley has been Director-General of the British Broadcasting Corporation since 1944)*

THE Editor of *Parliamentary Affairs* has asked me to give a factual account of the relationship between parliamentary institutions and Broadcasting. I propose to do so under three heads:

- (1) Broadcasting's responsibility to Parliament.
- (2) The broadcasting of public affairs insofar as it affects Parliament.
- (3) Broadcasting as a means of spreading information about Parliament.

### I

Parliament is the keystone of the arch of our democracy. Broadcasting is the most comprehensive, simultaneous, and ubiquitous means yet invented of communicating with the people. It is natural that from the very beginning they should have taken a lively interest in each other. The coming of Broadcasting in 1922 raised far-reaching and fundamental problems. What is not always realized is how early their general solution was found. From the very beginning it was clear Parliament would have to assume ultimate responsibility for Broadcasting because of the part Broadcasting promised to play in the national life. Parliament, at the same time, has never wanted to control the actual broadcasting service. The Crawford Committee, which in 1925 recommended the creation of the British Broadcasting Corporation, proposed

“that the prestige and status of the Corporation should be freely acknowledged and their sense of responsibility emphasized; that, although Parliament must retain the

right of ultimate control and the Postmaster-General must be the parliamentary spokesman on broad questions of policy, the Governors should be invested with the maximum of freedom which Parliament is prepared to concede."

Parliament has always been prepared to concede great freedom, while always retaining the right to be vigilant, to review the relationship or its working from time to time, to criticize, and to encourage.

In general, Broadcasting can be brought before the House for debate in three ways:

- (a) The Government can introduce a Motion with the object of getting Parliament's approval for Government decisions; e.g., a renewal of the B.B.C.'s Charter.
- (b) The Opposition can initiate a debate if it desires to criticize broadcasting policy, either by putting down a Motion or by discussing in Committee of Supply the Vote granting money for the service.
- (c) Individual Members can deal with Broadcasting in a Motion on the Adjournment, or by putting questions to the appropriate Minister. The Lord President of the Council deals with major issues invoking the Charter, the Postmaster-General with other matters of policy.

Such debates and such questions are generally confined to broad matters of policy. But Members of Parliament are like most other listeners in having their individual preferences and dislikes and at the end of a debate there have generally been a multitude of counsels. This is not always the case, of course, and if a debate reveals a consensus of opinion on any matter related to Broadcasting it is then for the Governors of the B.B.C. to consider their policy in the light of the debate. Questions about the individual content of programmes and details of administration are not normally answered in Parliament as they would be if they concerned a Government department. There is no firm demarcation line, however, between what is policy and what is day-to-day working. It is a matter of judgment.



Each year the Governors of the B.B.C. make a report to the Postmaster-General who presents it to Parliament as a White Paper. The accounts of the Corporation come before the Public Accounts Committee; and its finances are subject to comment by the Select Committee on Civil Estimates.

Constitution lovers may feel the relationship between Parliament and Broadcasting is unprecise. In actual fact it has worked well. There is never any doubt that the B.B.C. is unreservedly and perpetually answerable to Parliament. At the same time, a great sense of responsible independence for the Corporation, of freedom to initiate and to experiment have been engendered.

## II

Broadcasting being such a pervasive and (potentially) such a persuasive medium, the greatest attention has always been paid to the B.B.C.'s broadcasting on public affairs. From the earliest days of the British Broadcasting Company and indeed, during the first two years of the British Broadcasting Corporation the broadcasting of controversy was one of the two general prohibitions enforced by the Postmaster-General by virtue of his powers under the Licence. (The other was against the expression by the B.B.C. of any opinions of its own.) It was not until 1928 that the ban on controversy was removed. Five years were allowed to pass and then the whole question of the extent to which the B.B.C. should broadcast controversial views was the subject of an important debate on February 22, 1933 (*Hansard*, Vol. 274, Cols. 1811-1870), when the House of Commons resolved

"That the House, being satisfied that the British Broadcasting Corporation maintains in general a high standard of service, is of opinion that it would be contrary to the public interest to subject the Corporation to any control by Government or by Parliament other than the control already provided for in the Charter and the Licence of the Corporation; that controversial matter is rightly not excluded from broadcast programmes, but that the Governors should ensure the effective expression of all

important opinion relating thereto; and that only by the exercise of the greatest care in the selection of speakers and subjects can the function of the Corporation be fulfilled and the high quality of British broadcasting be maintained."

The overriding requirement of all broadcasting by the B.B.C. on public affairs is absolute impartiality. The Corporation has no views of its own. Its role is to be a means of communicating the views of others. It strives with the greatest possible care to do so without bias. The undertaking naturally presents many problems. They concern both speakers and subjects. So far as Parliament is concerned, one of the first considerations is that no political party shall derive unfair advantage.

Party political broadcasting is regulated by an agreement between the main parties and the B.B.C. It provides that the Corporation shall provide facilities for twelve broadcasts a year, to be allotted between the parties in proportion to the total votes cast at the last General Election. (The present allocation is Labour six, Conservative five, Liberal one.) The parties choose the dates and speakers for the broadcasts. The Corporation reserves the right, after consultation with the party leaders, to invite to the microphone a Member of either House of outstanding national eminence, who may have become detached from any party.

The agreement also takes cognizance of the necessity for non-controversial Ministerial broadcasts. Broadcasting is now a means of communication no Government can disregard when it needs to inform the public on matters of national interest. The parties, therefore, agree it is proper for Ministers to come to the microphone from time to time, to give information, to explain new legislation, to inaugurate administrative measures. The Minister must seek to obtain no party advantage from the broadcast. Should the Opposition consider he has overstepped the bounds of fairness they may approach the Government in the first instance. If Government and Opposition agree that the broadcast was controversial, even inadvertently, then the B.B.C. automatically provide opportunity for a reply.

If they do not agree then it is for the Governors of the B.B.C. to decide whether a reply should be given or not.

Outside Ministerial broadcasts and party political broadcasts there are all the other appearances by M.P.s at the microphone. Here, too, it is necessary to maintain impartiality. As any appearance at the microphone can give publicity and engender popularity—and, indeed, some entirely non-political broadcasts can be far more powerful in this respect than some purely political ones—the B.B.C. regulates all M.P.s' appearances at the microphone in its internal services so that over reasonable periods of time the same party proportion is maintained (six: five: one) as in the party political broadcasts.

The B.B.C. has the responsibility of ensuring that Broadcasting does all it effectively can to inform the public on matters at issue. At the same time, it would be highly undesirable for it to become a simultaneous debating arena with Parliament. There should be explanation, debate, controversy before, and possibly after, Parliament has dealt with an issue. But Parliament is the only grand forum of the nation. Once a matter at issue is under active discussion there, it should not also be being contested on the ether. In order to avoid this danger the Corporation a few years ago established a rule that no controversial or *ex parte* statement should be broadcast on a matter upon which a debate in Parliament is imminent. So far as possible "imminent" is construed as a fortnight before a debate in either House.

M.P.s are not invited to broadcast on matters while they are the subject of legislation.

General Elections naturally present special broadcasting problems. The present procedure, which appears to have won general acceptance both within Parliament and outside it, is based on an agreement which was reached between the B.B.C. and the three main parties in 1939, by which time experience had been gained in the course of the three General Elections of 1929, 1931 and 1935, when difficult problems had had to be overcome in circumstances which were still novel. Under this agreed arrangement:

- (1) Twelve periods were to be made available by the B.B.C.

and agreement was reached between the parties as to how the time should be allocated between them.

- (2) The Government was to speak first and last.
- (3) Three clear days (Sunday not being included) were to be left between the last talk and Polling Day.
- (4) No other talks of a political nature or with political implications were to be given by the B.B.C. during the election period, i.e. from the Dissolution to Polling Day.
- (5) The claims of minority parties were to be considered after Nomination Day and any party with more than twenty candidates was to be given a shorter period at a less important hour.

These arrangements were in line with the recommendations of the Ullswater Committee, which first laid it down as a principle that the B.B.C., as the trustee of the nation's broadcasting, should first offer for election speeches such time as seemed appropriate, after which it would retire temporarily from the proceedings, and leave it to the parties to share the broadcasts among themselves, deciding by agreement not only the proportions, but also the order of speaking. The B.B.C. can, of course, be asked if it will alter the total allocation in order to enable agreement to be reached. This has occurred and the Corporation at once complied.

In 1931 the total number of broadcasts allotted was ten; and in 1935 the number was 12. In 1945, in view of the fact that there had been no election for ten years, the figure was finally fixed at 24; this does not include the two additional broadcasts that were given at less important times to minority parties having more than 20 candidates in the field on Nomination Day. (The endeavour to check up on the claims of minority parties on this occasion made one aware of the interesting fact that, in any General Election, there is no official central register of nominations. One has to depend on lists issued by the news agencies or newspapers).

The rule that there should be three clear days between the last General Election broadcast and Polling Day was based on a recommendation by the Ullswater Committee designed

to avoid any last minute effort to stampede the electorate. It gives time for answer by other means, for reflection, and for public judgment to be exercised.

The rule that no political talks or comments, other than the election addresses, should be allowed during the election period, i.e., from the Dissolution to Polling Day, involves the B.B.C. in the duty to exercise a careful vigilance throughout its programmes, but the advantages of such a rule are clear during the period when a direct appeal is being made by the rival parties to the electorate.

The suggestion has been made from time to time that candidates and prospective candidates should in some way be regulated as broadcasters before Nomination Day, but this has never seemed desirable or practicable. The Corporation takes great pains, however, to see that Broadcasting is not allowed to build up political reputations outside those established in Parliament and by normal party processes.

There are many other aspects of Broadcasting on public affairs, but they fall outside the brief of this article, which is related to Parliament.

### III

In the course of the years the B.B.C. has sought increasingly to interest its listeners both at home and throughout the world in the proceedings, traditions, history, and constitution of Parliament. It does not seek to broadcast Parliament itself. The view of the parties has been expressed more than once, that the introduction of broadcast transmission from either Chamber, would in the long run, imperil the whole traditional tenor of debate.

That the broadcasting of Parliament has never commended itself to either House is generally known. It is not perhaps realized that the strength of the objection extends also to any recording of the most historic parliamentary proceedings, even with the proviso that the records should be immediately handed into the custody of the House to be preserved for archival purposes only. The Corporation did make an informal suggestion of this kind on one occasion.

but it was kindly but firmly declined. Perhaps quite rightly. It is one thing to speak with posterity in mind. It is another to have it present in the form of a recording microphone. It would be hard to prevent self-consciousness creeping in.

In one matter, Parliament has relaxed. In view of the success of the B.B.C.'s daily report of the proceedings of both Houses, "Today in Parliament" (and the fact that although spontaneously started by the B.B.C. itself on 9th October, 1945, it is now a requirement specified in the Licence), it is strange to recall that it was not until September, 1941, that B.B.C. reporters were given regular facilities in the House of Commons for taking notes of the proceedings. In May, 1940, the House of Commons authorities promised to keep one seat free each day in the Members' Gallery for a B.B.C. representative. But the taking of notes was not allowed. Before that, there were no regular facilities at all. Happily it has now become a part of the established practice in both Houses, that the B.B.C. should be given facilities for its reporters, and the authorities in both Houses have shown the greatest sympathy with the B.B.C.'s extending needs, within their serious limitations of space.

"Today in Parliament" has so generally commended itself both to Members and listeners, that it may be of interest to explain how it is compiled. Already in 1935 the Ullswater Committee had recommended that the B.B.C. "experiment" of sending a reporter to a parliamentary debate should be pursued. Mr. Attlee, who was a member of the Committee, made a reservation on this point. He did not agree with the practice. When, in the closing stages of the war, the B.B.C. began to consider its post-war plans for reporting Parliament it, too, felt that the practice of broadcasting daily reports of Parliament by a single individual observer would be open to serious objections. At the same time it felt that good as the special extended report which it commissioned from one of the news agencies was, it had one important defect. On occasion, it missed "the sense of the House". The relative amounts of space accorded to the different speakers did not always accord with the House's broad feeling of the con-

tribution they had made to the debate. It is almost impossible for the parliamentary *reporter* both to get down what is said, and to assess its relative importance. The B.B.C. has sought to bring both functions into its report by separate means. The basis of "Today in Parliament" remains the extended news agency report. But the team of B.B.C. sub-editors who prepare it for broadcasting do so in consultation with the B.B.C.'s representative in Parliament, who can listen to the debates without having to report them and who can give valuable first-hand guidance. The scheme has worked well.

One other feature of "Today in Parliament" should be mentioned. It is broadcast every day Parliament sits. It does not confine itself to the more important debates or the outstanding occasion. It is not merely an affair of headlines. If Parliament has met, no matter how apparently humdrum the business, the B.B.C. broadcasts a report to the people. "Today in Parliament" is also repeated the following morning.

Another means of giving listeners a view of parliamentary business is "The Week in Westminster", broadcast on Saturday evenings. This is now in its twentieth year, having begun on 6th November, 1929. The speakers are Members of one or other of the two Houses. They are asked to give a personal but objective impression of the week's proceedings. The speakers are chosen by the Corporation after informal consultation with experienced parliamentarians. In order to maintain a proper balance between the parties, the B.B.C. allots these talks in the same ratio as the party political broadcasts, with the inclusion from time to time of a space for an Independent or a member of a small party.

It can be held, however, that valuable as these direct methods of reporting of Parliament are, and large as their audiences have grown, they serve mainly those who are already interested. The work of spreading a knowledge of parliamentary institutions has therefore been taken up vigorously in various other ways. Talks and discussions about legislation, programmes about Parliament as an institution, authoritative information about parliamentary procedure, the historical development of Parliament; above all, talks on

Parliament to schools, all play their part. I have recently been looking at a list of such broadcasts in the B.B.C. home services. They total close on a hundred programmes during the last three years. In addition there have been innumerable similar broadcasts in the B.B.C.'s overseas services.

#### IV

This factual record does not pretend that everything that has been done has been perfect, or that there will not be developed other and better means of using Broadcasting to keep the people informed about Parliament and to appreciate the full meaning of Parliament. But it does show, I hope, that the task has been approached constructively, that the years have seen a steady development in methods, and that a deep sense of responsibility, and a constant seeking after objectivity, impartiality, and accuracy, have inspired the task throughout. Whatever has been achieved would not have been possible without the kindness and help of Mr. Speaker, Members and officials of both Houses. To them the B.B.C. and its listeners owe many debts of thanks.

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#### **"THE SCIENCE OF BROADCASTING"**

"... the science of broadcasting makes real democracy possible for the first time in this country. The representative system is a makeshift system and is not the system which we intended to have. It is the system we have because we cannot get real democracy, for real democracy presupposes all the citizens meeting together as they did in Athens and hearing speeches. Now for the first time by means of broadcasting you can get the whole community associated with your Parliament and give it the power to hear speeches, just as in Athens of old they heard the views of their representative citizens."

MR. L. HORE-BELISHA,  
*speaking in the House of Commons, 15th November, 1926.*



## ATHENIAN DEMOCRACY

by RUSSELL MEIGGS

*(Mr. Russell Meiggs is a Fellow of Balliol College and  
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THOUGH other elements have made powerful contributions, the main heritage of Western European civilization derives from Greece and Rome. When democracy is discussed, it is common and natural to trace its roots to the democracies of the Greek city states, and particularly to Athens, whose democracy left the greatest mark on ancient political thinking. On Athenian democracy there has been a wide range of judgments. Mitford, writing with strong Tory convictions under the shadow of the growing excesses of the French Revolution, saw in Athenian democracy the irresponsible play of an unstable mob. Grote, writing against the background of the confident development of Victorian democracy, saw in Athens the prototype of many of the institutions and principles which were the life-blood of British politics. The Marxist analysis of history tempted some to apply the doctrine of the class war to Athens; but the existence of slavery made rigid application difficult, for the working class at Athens was largely composed of slaves who had no voice in government. More recently the clear emergence of two entirely different conceptions of democracy has made us ask again what democracy is. It is pertinent to review once more the first great democracy, for the ideological battle may yet be extended to editions of Aristotle's *Politics*.

The most important governing factor in Athenian democracy is the extremely small size of the political unit. The state of Attica, centred on Athens, occupied some 1,030 square miles, the size of Derbyshire. The population in the middle of the fifth century totalled roughly 316,000, of whom some 180,000 were citizens, 28,000 resident aliens, the rest slaves. About half the population lived in the city

and its harbour, the Piraeus, corresponding approximately to the population of Portsmouth; the rest were distributed in small communities, mostly agricultural, over the countryside. The harbour was the busiest in the Greek world and with the city provided scope for a wide range of crafts and trades. But the land was intensively farmed and the farming population remained an important element in politics as well as in the armed forces.

Athens had slowly developed constitutionally from monarchy, through feudal aristocracy and then a temporary absolutism which quickened social and economic ferment, to advancing democracy which reached virtually its final pattern in the reforms of the middle of the fifth century. Athenian democracy was most vigorous in the second half of the fifth century; in the leaner days of the fourth century, following defeat in war, it became more stable, more efficient technically, but less resourceful.

The first essential of Athenian democracy was that sovereignty lay in practice as well as in theory with the people. Major decisions on foreign and domestic policy were taken by a vote of the popular Assembly which all citizens over eighteen were entitled to attend, and which met on appointed days, roughly four times a month, though special meetings could be called. For certain important decisions, such as the imposition of a property tax, a minimum quorum of 6,000 was established by law, but even for ordinary business attendance ran into thousands.

A large popular assembly cannot initiate policy and transact business unless an agenda is first prepared and digested. This was the task of the Council, an annually changing committee of the Assembly. Careful precautions were taken to ensure that it was fully democratic and not the monopoly of any particular local or political interest. It was composed of 500 members holding office for a year. Any citizen over thirty who had not served more than once before was eligible to stand as a candidate, and the places were filled by lot, on the assumption that any citizen who was willing could fulfil the duties of office. The total of 500 was secured on

a representative basis, 50 being appointed from each of the ten tribes, and these tribes had been ingeniously devised to eliminate the faction-breeding influence of local groupings. For each tribe was composed of three groups of demes, small communities, coming from three different parts of Attica, from the city, from the coast lands, and from the interior of the country. The tribe was the basis for all representation and it provided a fair cross-section of the community. The 500 Councillors selected by lot were subject to an official scrutiny by the outgoing Council to ensure that they had the necessary qualifications of birth and age and clean record in their relations to the State.

The primary duty of the Council was to prepare business for the Assembly, to formulate proposals in a form which could be ratified, after discussion, by the people. But though no measure could be discussed in the Assembly without such formulation through the Council, any citizen could have access to the Council. His proposals, if accepted by a majority, were formulated by a Councillor and duly presented to the people. In the same way foreign envoys wishing to negotiate with Athens came first before the Council and were then introduced to the Assembly. The duties of the Council were not confined to preparing business for the Assembly; they had also executive duties and were responsible for supervising the work of the magistrates.

The full Council of 500 could not be expected to meet every day, for if it was to be fully democratic it had to be open to citizens who had other work to do to earn their living. The year was therefore divided into ten periods, prytanies, and each of the ten tribal divisions of 50 Councillors represented the Council in turn. During their period of responsibility the Councillors of the tribe on duty, prytanes, were in continuous session and were maintained at the State's expense in a public building next to the Council House. One of them, changing daily, acted as president and presided also over the meetings of the Assembly. In devolving so much responsibility on a small committee of 50, the democracy instituted certain safeguards. Each tribal committee had a secretary, but the

secretary had to be chosen from a different tribe. To avoid collusion between prytanies, the order in which each tribe should serve during the year was decided by lot, but the lots were not drawn until the last day of the outgoing prytany. The prytanes carried on the day to day routine business. For the preparation of business for the Assembly and all important matters the full Council was responsible.

The annually changing Council of 500 was the nerve centre of the democracy. Since only two years of service were allowed it could never become a professional body. Nor was there the hidden power of a permanent Civil Service in the background; there were clerks in the record office and in the Council, but their duties were unimportant. Nor were there drafting committees. The decrees that have been preserved from the fifth century are the compositions of individuals of varying abilities; and it is not perhaps fanciful to see, sometimes at least, in the contrast between shapely measures logically developed and others which have no apparent order and no tightness of expression a difference in social class and educational background.

The business prepared by the Council was submitted to the Assembly, meeting on the Pnyx, the open slope of a rocky hill. There was no cover from sun or rain and, except for the prytanes, there were probably no benches. In many of their theatres the Greeks sat on steps cut in the rock; it was no greater hardship to sit on the Pnyx, though doubtless the more sensitive brought cushions. The prytanes of the day sat in front on benches; their president acted as chairman, putting the vote when the moment came. The people sat in no special order, wherever they could find a place, though the practice developed of partisans grouping together to make an impressive demonstration at the right time. After due sacrifice had been made, a herald, requiring the qualities of our town-criers, read out the first resolution. "Who wishes to address the people?" At this point any citizen could speak to the proposal. He could support it, he could denounce it, he could propose an amendment. Such amendments might be trivial concerning points of procedure; but they could be

radical, involving a complete change of policy. An example may be cited from a decree embodying regulations for the despatch of a colony to Brea in Thrace. "Phantokles propose the following amendment concerning the colony to be sent to Brea. The tribe of Erechtes in prytany shall bring Phantokles before the Council at its next session. The colonists to go to Brea shall be drawn from Thetes and Zeugitai. Through oversight or deliberately the Council's proposal had left unspecified from what classes the colonists, who would get good land in the new settlement, were to come. Phantokles wished to ensure that only the two poorest classes benefited. He also no doubt made a long speech offering various other suggestions. They were not of sufficient importance to be embodied in the decree, but he was to have a hearing before the Council, who would supervise the project.

The speaking done, the president put the vote which was taken by a show of hands. Of the management of this vote we know nothing. Normally the decision would be at once apparent, but a narrow vote must have required careful organization and probably much noisy excitement. On one occasion an earthquake occurred before the vote could be taken, enforcing an adjournment. No doubt there could also be appeals against bad light.

When the resolution had been adopted it was binding on the people, and if the measure was of some consequence it was the responsibility of the secretary of the Council to have it inscribed on stone and set up in a public place where all could see it. Many such public records have been preserved and the standard form of the decree illustrates well the procedure described. "It was resolved by the Council [who had submitted the decree to the people] and by the People [who had ratified it]; Kekropis was the tribe in prytany, Mnesitheos [from a different tribe] was secretary, Eupeithes [of the Kekropid tribe] was President, Kallias [a Councillor or general] introduced the decree."

Proposals submitted to the Assembly were not confined to important questions of foreign policy and social reform. The building policy which within a generation transformed the

Acropolis was hammered out in the same way. The inspiration came from Pericles and the architects, but the erection of each building, the choice of architect, and of the commission to supervise the work rested on decisions of the Assembly; and it is clear that even Pericles had to struggle hard and did not always win his way. We can still see how the plans of the Propylaea, the monumental entrance to the Acropolis, were modified by the opposition. The architect's original design could not be carried out because it would have encroached on certain sacred reserves. The Propylaea of Mnesicles as completed represents but a torso of the original scheme. The full logic of popular control was carried out in this field too. The record of each building was inscribed in stone. All Athenians could see how much money had been spent on the great Parthenon, and under what main heads.

In decisions by a large Assembly there was always the danger of irresponsibility and inconsistency. The British provide for continuity of government by their system of parties, elections, cabinet; the Athenians had no such safeguards. But two institutions modified the inherent dangers. Any citizen could prosecute the proposer of a bill before or within a year of its enactment if it was inconsistent with previous enactments. More important was the institution of Ostracism, or *Sherding*, which provided for banishment from the state for ten years. Ostracism had been introduced to counter the threat of absolutism, as a means to be rid of a potential autocrat by vote before he seized power. Later, when the fear of absolutism had receded, it was used to decide between leading public men advocating opposing policies. At a stated meeting each year the Assembly was asked to decide whether an Ostracism should be held. If an Ostracism was voted every citizen on an appointed day was required to procure a scrap of broken pottery, write on it the name of the citizen whom he wished to remove, and bring it to the market place. If not less than 6,000 sherds were cast the man with most votes against him had to leave Athens for ten years, after which he could return to the full exercise of his rights.

The Assembly wielded real power. Its composition is therefore important. Were the men who attended the meetings ignorant and illiterate, the pre-ordained victims of a persuasive speaker, or were they highly intelligent and responsible? Both extremes have been urged; on both sides there has been exaggeration. The citizens of Athens were certainly not all intellectuals, but it is equally misleading to regard them as an ignorant mob. Since no man could serve more than two years in the Council, considerably more than half the citizens must have served at some time and had therefore seen the detailed administration of public business. A smaller number, but not an insignificant proportion, had held office of some kind. Most could appreciate what they heard in the theatre and the inference to be drawn in this respect, particularly from Greek comedy, is important. For the comic playwrights were not writing for the intellectuals; they wanted to win the prize, and the prize was decided not by experts but by the votes of the audience. This is clear enough from the plays of Aristophanes who makes no bones about asking for the people's vote. The horse play and coarse humour may have been stressed to satisfy the popular palate, but Aristophanes was no buffoon. He could write exquisite poetry without losing popular favour and he could attack the popular figures of the day with subtlety as well as bluntness. His detailed parodies of Euripides imply in his audience a considerable knowledge of the tragedies, which is further witnessed by the tradition that many of the Athenian prisoners after the disastrous defeat before Syracuse, won their freedom by reciting Euripides' verses. The Assembly was certainly not an ignorant mob and it was certainly politically minded. On any major political issue very few Athenians would have responded to a Gallup Poll enquiry with a "don't know". Knowledgeable they certainly were, but it was knowledge picked up in the streets, in the barbers' shops, in the theatre, not in the study of informed criticism. Most of them were workers—farmers, shopkeepers, traders and craftsmen. For slave labour did not free the citizen body from hard work. A minority of families had sufficient landed or other property

to free them from the necessity of earning a living. The great majority had to work hard, and in working conditions there was in most trades little distinction between slave and free. It was for this reason that State pay was essential for State service and was introduced by the fully developed democracy for magistrates, councillors, and, first in time and first in importance, for jury service.

For jury service also was a fundamental feature of Athenian democracy. In early days the administration of justice had been in the hands of the nobility. Harsh laws were modified with the development of society, an appeal to the people was introduced by Solon, but for long the power of decision in legal cases rested with magistrates drawn from the upper classes. It was not until the fifth century democratic reforms that full control over the law courts passed to the people. From this time the magistrate was only a presiding chairman: the decision rested with a lot-selected panel of jurors. Each year a roll of 6,000 citizens was drawn up from whom the various panels for individual cases were taken by lot. The panels were large to guard against bribery; the court which tried Socrates consisted of 501, and courts of 1,001 are known. The prosecutor and defendant made their speeches, often prepared by a professional speech writer, witnesses were heard, documents produced, and the jurors cast their pebbles. This popular control of the courts was particularly important in political cases. In British democracy it is a cardinal principle that the Judiciary should be independent of politics. The Athenians had no such confidence in the expert, and no such fear of prejudice, provided the prejudice was of the right flavour. Evidence was required, but the substance of the argument was directed to democratic sympathies. In days of crisis an oligarch had little hope of a fair hearing, and for sound democrats failure was almost as dangerous as illegality.

In any consideration of Athenian democracy, the magistrates should logically be considered last, for they were in a very real sense the servants of the people. In earlier times office had meant power and had depended on birth and wealth. It was vital to full Athenian democracy that



office should not be the monopoly of a few, but open to all. This principle was most clearly expressed by the general application of the lot. The president of the State was the archon who gave his name to the year. Once the office had been the storm centre of family rivalries: now it was open to all but the lowest property group, and appointment was by lot. So, too, with almost all other magistrates. To this general rule there was one important exception. The ten generals normally chosen one from each of the ten tribes, led the force in war. For this special responsibility the principle of election was maintained and while the archonship fell to chance appointment, the office of general was long filled by men of inherited wealth and influence. It was on his continuous re-election as general that Pericles' commanding position in the State rested. But though Thucydides describes the period of Pericles' dominance as the rule of the first man in the state rather than democracy, there was nothing unconstitutional or undemocratic in Pericles' position. Each year the people were free at the elections to reject him, nor while general was he outside their control. The generals had indeed the right of attending the Council and could bring forward proposals through the Council to the Assembly, but the carrying of these proposals rested on the people's consent. The generals had little power of initiative: all major decisions on war, peace, campaigns, and alliances rested with the Assembly. At any meeting Pericles was open to attack. When, in his old age, the people grew restless under his military leadership in war, they deposed and fined him.

The officers of State were under strict popular control. Before entering office they were subject to scrutiny in the courts to ensure that their public record was sound. At the end of their year of office they had to submit a formal account of their expenditure of public funds and any citizen could bring a charge against them for misappropriation, corruption or illegality. During their year of office they were subject to a monthly financial scrutiny by the Council who also generally supervised their work at every stage. The control of the Council over magistrates may be illustrated

from a typical decree: "The 30 public auditors now in office are to calculate accurately the sums due to the gods, and the Council is to exercise full control over their computation. And the prytanes are to hand over the money in the presence of the Council." The attitude towards magistrates is better illustrated in a violent war-time decree which provided for a sharp increase in the tribute assessments of the cities of Athens' empire. "The assessors shall enrol the name of the cities within five days from the time they are selected, or for each day each one of them shall pay a fine of 1,000 drachmas. The administrators of the oath shall swear in the assessors on the same day that they are selected, or each one of them shall be subjected to the same fine. The introducers shall care for the adjudications on matters of tribute when the people so vote. These cases shall be received of necessity by the archon and the polemarch in the Eliaia. . . . If they do not take action at once each one of them shall be subject at his examination according to the law to a fine of 10,000 drachmas." The proposer of this decree intended to ensure that political opponents did not weaken his policy in execution.

So much for the mechanics of Athenian democracy: a briefer word on the spirit. The most flattering portrait is painted by Thucydides in his record of Pericles' funeral oration over those who died in the first year of the Peloponnesian War. "It is true that we are called a democracy, for the administration is in the hands of the many and not of the few. But while the law secures equal justice to all alike in their private disputes the claim of excellence is also recognized. . . . There is no exclusiveness in our public life. . . . An Athenian citizen does not neglect the state because he takes care of his own household; and even those of us who are engaged in business have a very fair idea of politics. We alone regard a man who takes no interest in public affairs not as a harmless, but as a useless character; and if few of us are originators, we are all sound judges of a policy." Others painted a very different picture. Among the works that have come down to us under the name of Xenophon is an interesting though poorly expressed political pamphlet by a confirmed oligarch.

He hates Athenian democracy, but is fascinated by its efficiency in ensuring its own maintenance. It is a bad system because the good are ruled by the bad, but it is a logical system because the people do really rule and ensure that the rule will not be upset. "I say that the people of Athens judge which of the citizens are good and which bad. Some they find friendly and sympathetic, and these they love even if they are evil. The good they hate; for they consider that the 'virtue' is not directed to the good of the common people. . . . I pardon the people for their democracy; for it is pardonable for any man to benefit himself. But an man who voluntarily chooses to live in a democracy rather than an oligarchy has prepared the way for an unjust life and made up his mind that bad practices are less noticeable in a democracy than in an oligarchy. . . . In the law courts they care less for justice than their own interest." His cynical analysis is a needed corrective to the idealism of the funeral oration. Free discussion was certainly vital to Athenian democracy and free criticism was allowed. Aristophanes' ridicule and abuse of leading public figures can stand comparison with the most virulent political cartoons of a modern free press. But Athenian tolerance should not be overstressed. Oligarchs had fought the democratic revolution and though many of them were won over by Pericles, there remained an underground movement anxious for change, ready to seize power when opportunity offered. The people took good care to prevent the opportunity, and in critical days they were prepared to use foul means as well as fair. Trumped up charges of conspiracy were easily brought, and the large popular jury panels were easily inflamed. During the Peloponnesian War there are indeed traces of something very like a class war. After the disaster of the Sicilian expedition the oligarchs seized their chance and lost their opportunity. They seized power but their reaction was too violent to undo history. When the emergency was over and Athens, defeated, had to set about reconstruction, full democracy was once again established and never again challenged while Athens remained free.

## PARLIAMENTARY INSTITUTIONS IN CANADA THEIR HISTORY AND PRESENT STATUS

by CLARIS EDWIN SILCOX, M.A., D.D.

*(Dr. Silcox has had a wide experience in religious, social and political affairs not only in Canada, but also in the United States, Latin America, and Europe.)*

ON the palace of the former Viceroy of India, there is inscribed this motto: "Liberty will not descend to a people; a people must rise to liberty"—a truism, perhaps, to be learned in bitter experience by many newly-emancipated nations. For the course of true democracy and of parliamentary institutions seldom runs smoothly. As Lord Acton put it in his review of Goldwin Smith's *Irish History*: "The acquisition of real definite freedom is a very slow and tardy process." This, Canadians have discovered in the three or four hundred years of their history.

The course of democracy and parliamentary institutions in Canadian history can be considered in a few very clear epochs. In the French regime which came to an end in 1759, there were no parliamentary institutions of any kind. Government was directly under the kings of France who did not hesitate to affirm that they were the State. Through a Governor, an Intendant and a Bishop, who were assisted in some fashion by a legislative council, they ruled directly, and nothing important was undertaken without the definite approval of "His Most Christian Majesty", the King of France. Thus, when Quebec fell to General Wolfe, Great Britain added to her domain some fifty or sixty thousand French Canadians who had no experience whatever in democratic or parliamentary institutions of any kind, and certainly nothing comparable to the compact signed in the cabin of the *Mayflower*, or the assembly of the Commonwealth of Massachusetts, or the town meeting characteristic of the New England community. Some of the American colonials who came to Canada after the fall of Quebec were over-eager to establish certain representative institutions which they could dominate, but they dismissed every suggestion that the French

should enjoy such representation, while the military governor sent by Britain had no desire to be led around by ambitious Bostonians and New Yorkers, and hence made haste most deliberately.

Indeed, the first representative institutions in what is now the Dominion of Canada were not established in the original colonies of Canada at all, but in Nova Scotia (1758) where the New England spirit was strong and insistent, and in Prince Edward Island (1773). When New Brunswick was separated from Nova Scotia in 1784, it received a representative assembly. Not until 1791, when the Constitutional Act separated Canada into Lower and Upper, did the original Colonies have an assembly. But while these primitive representative assemblies were not unimportant, they were, for the most part, extremely limited in their powers. They could pass laws, but an irresponsible Governor and his Legislative Council could ignore such laws; they might vote on money to be raised by taxation but certain moneys were received by the Governor directly from the Mother Country for defence or kindred purposes and this made him partly independent of even that particular check on his arbitrariness. All this created the anomaly referred to by Sir Robert Borden in his lectures on "Canadian Constitutional Studies", when he pointed out that in the early years of the nineteenth century Canada had representative government when Britain was still struggling to free itself from the power of those who controlled the rotten boroughs and thus to achieve truly representative government, but that Canada did *not* have responsible government while the United Kingdom did have it. So, the next great struggle in Canada and in the maritime Provinces was for responsible government, and this was achieved in the years following the revolution in 1837 and before Confederation in 1867.

But neither representative government nor responsible government were enough to create a unity in the British North American colonies, or to overcome the sharp difficulties encountered in the clash between the French and English patterns of life, or to provide adequate defence for colonies which had been grievously invaded in 1812, subjected to

annoying sallies by groups of Americans between 1837 and 1867, and threatened by dire possibilities when the war between the States (1860-1865) had come to an end, or to take the Herculean but necessary action not only to hold but to develop the great Northwest for Britain when the rights granted to the Hudson Bay Company should be terminated. In addition to all this, there was the experience of the United States of America to ponder. The Americans had established a federal government of sovereign States and had been extending their sway west and south and even threatening (as in the Oregon affair) to absorb what is now the Canadian Northwest. Hence, the next step for British North America was confederation.

But despite the strong and unassailable arguments supporting confederation, it ran into difficulties, and without the infinite patience and remarkable political acumen displayed by the Founding Fathers the movement would have failed. As it was, Prince Edward Island, the tiniest of the Provinces, declined to be a charter member and postponed her entrance into the union until 1873 (just as Rhode Island, the smallest of the American States, was the last to ratify the federal constitution). Newfoundland, too, withdrew from the plan although the door was kept open for her reconsideration. She did reconsider in 1893, but again declined to become a part of Canada. The difficulties were, of course, those usually associated with particularism and the fear on the part of the smaller Provinces of being inundated by the larger Provinces.

It has been said that the articles of agreement submitted to the Imperial Parliament for incorporation in the British North America Act had been drawn up not by lawyers but by Canadians with a less theoretical and more practical bent. This, if true, may have been an advantage; or it may also have been responsible for some of the provisions in the Act which have later proved so difficult to harmonize. At all events, the Act was finally passed, confederation became a reality and the Dominion of Canada was launched on the course she has since followed for eighty-one years. Almost immediately afterwards, Canada acquired Rupert's Land and the Northwest Territory and, from these, new Provinces were carved out—Manitoba as

early as 1870 and later, in 1905, Alberta and Saskatchewan. Confederation had barely become a reality before the small colonies west of the Rocky Mountains united, made provision for representative government, and on their own petition were incorporated as British Columbia in the new Dominion. Canada thus came into possession of a considerable portion of the land surface of the world. She had room and more than she needed for expansion. Since the incorporation of Rupert's Land and the Northwest Territory, no new areas were added to the Dominion, although there were boundary adjustments involving Alaska and Labrador, until the inclusion of Newfoundland, the first large territorial expansion since 1870.

The eighty-one years of Confederation have witnessed the consolidation of this far-flung empire, the building of a fairly adequate basis for a steadily improving standard of living, the development of more amicable understanding between the two old Canadian races—the French and the English—and between both of these races and the newer Canadians who have come to Canada in more recent years as immigrants (incidentally helping to adjust the losses sustained by emigration of the native-born to the United States), the working out of the Constitution in the light of the interpretations of the Privy Council, and above all the emergence of Canada from its colonial status to that of complete independence and practical sovereignty within the British Commonwealth of Nations.

The participation of Canada in two world wars from their outset has raised many difficult problems in national unity and in the relations of this vigorous young nation with the United States and other countries in the Pan-American Union. It has also sharpened many of the constitutional problems involving (1) the respective powers of the Dominion Parliament and the Provincial legislatures, especially in their responsibilities for social welfare; (2) the status of civil liberties and a more exact definition of the rights and obligations of Canadian citizenship; (3) the danger arising from the tendency of the Executive to transfer from war-time to peace-time government by orders-in-council, thus by-passing Parliament; (4) the complications created by the emergence of several political parties, some of

which have significant followings, outside the two old and traditional parties—the Liberals and the Conservatives; (5) Canada's relations with the British Commonwealth, the United States, Western Europe, Latin America, and the United Nations.

Some of these new problems will be treated briefly later. Others, such as the existing impasse in the field of Dominion-Provincial relations, require for their exposition a special article. But in all these changes, Canadians are conscious that the hand of destiny is on their shoulders, and that in their struggle to secure representative and responsible government, to achieve confederation (within the British family of nations) of Provinces with populations differing in race, language and religion, and to win the recognition of our autonomy and sovereignty not alone from the Colonial Office in London but also in the eyes of the whole world, they have an experience of value to all who are seeking to create unity out of multiplicity of nations and races and creeds, an experience with some notable failures but also with much success. They are not disposed to yield the freedom they have already achieved at no little cost, but are prepared to do their part in the building of a world community in which the whole will maintain a decent respect for the divergent needs and desires of the several parts.

It is a solemn thought to Canadians that they have achieved this recognition of their sovereignty just when, on every hand, voices are raised urging the nations to surrender aspects of their sovereignty; they have attained at least the status of a "middle Power" just when the future of small nations in a world of power politics is becoming more and more problematic. Indeed, if Canada has come of age, she has attained it just when the times demand the submergence of some measure of her alleged sovereignty to strengthen a bloc sufficiently able to provide a modicum of security in a most precarious world. As Mr. Amery said in his address delivered in 1940 on a "European Commonwealth": "whatever else may result from this war there will be no more room in Europe for entirely self-regarding, irresponsible small neutrals." And to those who speak so blithely of World Federation now, Canadians



can point out the persistent difficulties which they have encountered in creating such a unity in even a small section of the human family.

On the whole, the institutions established at Confederation have served well and provided an unusual political experience. It would be foolish to attribute the great progress made by Canada to her institutions alone, but without them she could have achieved but little—indeed, she would probably have been absorbed more or less painlessly in the American Republic. But she also owes her great strides to the fact that she was a member of the British family of nations and that in her adolescence and infancy she had the protection of the British fleet—no nation could do her serious damage with impunity; to the good-neighbour policy which, despite some lapses, has inspired the relations between the United States and Canada; and to the extent of her natural resources, scattered over a vast area and not always readily accessible or in the places where they could do the most good, but available for those who had the courage to exploit them.

In regard to the constitutional provisions, it may be said that Canadians generally are perfectly satisfied with the institutions of a constitutional monarchy. As a people they are loyal to the King. Their convictions regarding the monarchy are not founded on mere traditionalism or even on love of pageantry. Only once have their King and Queen come to visit them in person, and they therefore have had to enjoy the pageantry more or less *in absentia*. Nor is their faith in the monarchy due to a frantic desire to retain the one remaining and necessary link that holds them to the British Commonwealth—although they recognize the importance of that fact. It is more probably due to their nearness to the United States and their sober conviction that a constitutional monarchy has many advantages over a republic. They prefer the head of their State to be one who is above all partisan politics, neither revered for his views, nor hated, but the symbol of dignity, grace and compassion—the ideal of the nation.

Canadians are therefore not only satisfied with the monarchy but they take pride in it without fanaticism. And

they are quite satisfied with the office of the Governor-General. They know that no Governor-General is inflicted on them against their will, that he is named by the King only on the advice of His Canadian Ministers. One suspects that the real reason why the Canadian Government has never asked the King to name a Canadian as viceroy, is the feeling that the people would know too much about the political partisanship of any Canadian who might thus be named. He could hardly be regarded dispassionately as the representative of the Crown. Some Governors-General may have been rather colourless, but for the most part they have been men who have made important contributions outside the field of politics to the life of the Dominion, perhaps most notably Lord Dufferin and Lord Tweedsmuir. Few Canadians chafe under the monarchy or its representatives in Canada.

As to the Cabinet, Canadians generally prefer the system of responsible government, for which their fathers fought vigorously and triumphantly, to the system in the United States which makes possible a frequent deadlock if not a prolonged vendetta warfare between the executive and the legislative branches of government. Nevertheless it does not necessarily follow that a man with great administrative skill will have either the interest or the capacity to fight an election. It is, moreover, probable that any Member of the House of Commons who has accepted a Cabinet position will have little time in which to acquaint himself with the particular interests of the constituency which has elected him and so in some respects may fail to represent it worthily. Inevitably, too, when the House is in session and the presence of the Cabinet Minister is demanded to answer questions and parry blows, the supervision of his department must be largely left to his deputies. Still, on the whole, there is much to be said for a Minister who is required to rise in the House at any time and defend his stewardship. Such discussions, when intelligently followed by the public, have an educational value and ought to acquaint the whole people with the reasons, good or bad, for the existing state of affairs.

It is generally recognized that in war-time, govern-

ments must act promptly and often on matters of greatest importance without recourse to Parliament, but in peace-time there is often a tendency on the part of the Cabinet to carry over their war-time psychology and to issue ukases over the air on a Saturday night after the banks and exchanges are closed, thus upsetting the normal course of business and without permitting that preliminary public discussion of the issue involved which might make the people more resigned to their decisions. Such reliance on orders-in-council have ruffled the feelings of the Canadian people increasingly, and many Members of Parliament have come to feel that they are being unnecessarily ignored and confronted too often with *faits accomplis*. Canadians fought hard for responsible government and intend to maintain it.

The Dominion Parliament and one of the Provincial legislatures (Quebec) are bicameral. The Upper House at Ottawa is called the Senate and there is considerable uncertainty concerning its usefulness. It was created as a Canadian parallel to the House of Lords, but Canada had repudiated the hereditary principle and the idea of an aristocracy of birth. On the whole, however, the Founding Fathers disapproved of a second *elective* chamber as in the United States. They preferred an appointed body, and determined to provide for such a chamber a certain security and freedom by making the appointments for life.

While the British North America Act does specify that legislation requires the concurrent action of both the Senate and the Commons, there seems to be no particular duty or function especially designated for the Senate. As a result, there has been no little dissatisfaction with it and from time to time suggestions are made that it be reformed or abolished. The real difficulties arise in the composition of its membership. Appointments by the Governor-General are in reality appointments by the government in power. Hence, while it was intended—though vaguely—that equality of representation in the Senate between the major territorial divisions which came into Confederation would serve to protect the interests of the smaller Provinces, the Senate has actually become what

has been called "a reservoir of party patronage". At the present time, due to the fact that a Liberal administration has been in power for nearly twenty-two of the last twenty-seven years, the overwhelming majority of the Senators are Liberals, and an administration of any other party would have to be in power a very long time in order to achieve a majority in that Chamber.

As for the Commons, which is elective, there are problems not unlike those which confront all democracies in securing the consent of the ablest men in the community to stand for election, and in persuading the electorate to exercise the franchise. To run for Parliament is a precarious business and the modern age seems to demand security for everybody from the cradle to the grave—except for legislators! But in recent times, special problems have developed with the rise to importance of new political parties. It is often said that the British system operates best where there are but two recognized parties, not too far apart in their prevailing ideology, so that at election time an unsatisfactory government can be turned out and give place to a clear alternative without running too great a risk of serious discontinuity. When, however, there are more than two parties having important followings and indulging in a multiplicity of incompatible ideologies and even of fanaticisms, the problem confronting the voter is highly difficult. Moreover, under these conditions, a party may come into power when it has no plurality of votes and actually is favoured for first choice by only a minority of the people.

In a sense, it may be said that in Canada at the present time there is government by a minority. At the last Federal Election, the Liberals retained control of the government by a bare majority of seats, based on less than 40 per cent. of the popular vote. They secured 56 of the 65 seats allotted to Quebec and 605,832 votes in that Province, but the Conservatives, with 109,755 votes, secured only one seat. It is a curious anomaly that the Province of Quebec, which is the most tenaciously conservative Province in the Dominion, is the stronghold of the Liberal Party and by its relative unanimity decides the main lines of national policy. Yet, in this Liberal

stronghold, in the last Provincial elections held in 1948, the Liberals were completely smothered.

At the present time, the situation is everywhere anomalous. In British Columbia and Manitoba, the Provincial Governments are coalitions of Liberals and Conservatives; that of Alberta is all but unanimously Social Credit; that of Saskatchewan is overwhelmingly Co-operative Commonwealth Federation (Socialist); that of Ontario is Conservative; that of Quebec is Union Nationale. Only in the three small Maritime Provinces are Liberal Provincial Governments in power. Yet, at Ottawa, the Liberals hold the majority. Mr. Mackenzie King, even in war-time, expressed his unreadiness to consider coalition.

It is well to mention another factor in Canadian life which makes the course of government extremely complex and on the whole discourages strong and aggressive leadership in any party. Canada has neither racial nor religious nor linguistic homogeneity. Political leaders, therefore, always walk softly lest they give offence to the French in Quebec, to the English-speaking in the other Provinces, to the New Canadians in the West, to the Roman Catholics with over 42 per cent. of the population, or to the non-Roman Catholics. There is no common spirit of Canadianism, no Canadian soul to which they can appeal, no basic concept of a Canadian culture and way of life which strong leaders can always trust. One Canadian leader who has enjoyed long tenure of power has frankly admitted that he has found it inexpedient ever to commit the Government to any policy in advance of clear, popular sentiment. Thus, the Government tends to follow rather than lead. While Canada may seem to be a country abounding in opportunity for men of ability, the safe man usually has been preferred to the audacious.

Out of such experiences in racial, religious and linguistic heterogeneity, Canada has much to contribute to the building of parliamentary institutions in the world federation of the future, but her experience should help other countries to know better not only what to emulate but also what to avoid.

## THE ORIGIN AND ESSENCE OF HYBRID BILLS

by R. W. PERCEVAL

*(Mr. Perceval is a Clerk in the House of Lords)*

THE purpose of this article is, first, to show briefly the historical origin of hybrid bills, and secondly, to consider, as a matter of principle and in the abstract, which bills should be classed as hybrid and which should not, and why.

But before we can start, we must precisely define the difference between a public and a private bill. A public bill, then, is one which is to issue in an act which will apply, *by description*, either to everyone subject to the authority of Parliament, or to certain classes of those persons. And for this purpose "classes" may include people living in an area large enough to be called a "country"—areas such as India, Ceylon, Scotland or Wales, and sometimes even London and the Isle of Man. A private bill, on the other hand, is a bill, promoted by some person or body outside Parliament, for an act which will apply, *by name*, to particular individual persons or groups of persons,<sup>1</sup> and which will be in the strict sense of the word, a "*privilegium*", a private law; and which alters the law for the advantage or disadvantage of such persons or groups, by enabling or compelling them to do something which, in the ordinary course of law, they could not do or could not be compelled to do.

In many ways the distinction between a public and a private bill is analogous to the distinction between a common

<sup>1</sup> I had almost added here "or areas"; but, of course, laws do not, strictly speaking, apply to areas. They may apply to persons living in, or owning, or having other rights or duties connected with areas or things. And so, for our purposes, amongst the possible methods of "naming" persons, we shall have to include "identifying by reference to a particular thing or piece of land to which they stand in some relation". For instance, a bill applying to a man *qua* owner of No. 4 Acacia Road, Hoxton, or *qua* borough councillor of Bootle, would be, *pro tanto*, a private bill.

and a proper noun. The public bill and the common noun apply, by description, to classes of people; the private bill and the proper noun apply, by name, to particular existent individual persons or groups of persons. Strictly, a private bill should not apply to any person not named (or otherwise identified—e.g., by reference to his ownership or other connection with a certain particular piece of land) in the bill. When therefore the British Transport Commission proposes to take powers by private bill to stop and search for stolen goods any person or vehicle near any of the Commission's property, it seems to be stretching to the extreme limit the theoretical scope of legislation by private bill. But of course the distinction between public and private bills, if strictly and logically refined, becomes more a matter of metaphysics than of politics: and in practice the line between them is drawn more or less by rule of thumb.

The distinction between public and private bills, and the difference in the procedure they follow, are nearly as old as Parliament. In 1320, for instance, the King refused his Assent to a private bill because "this petition has already been answered in a Common Petition (i.e., a public bill) . . . which deals with the point referred to therein, and contains several other articles touching the commonalty of the Realm". And in 1393 Robert atte Mulle, having had a clause inserted in a public bill letting him off a £600 fine he had incurred for not declaring treasure trove, was told to promote a private bill as this was "not a matter for a public bill".

During the fourteenth and fifteenth centuries, most bills originated on petition—private bills on the petition of the person concerned, and public bills on the petition of the Commons, or very occasionally the Lords. But since Parliament consisted of *King*, Lords and Commons, there was a third possible originator of legislation; and in the fifteenth century we begin to find bills like this:

"The King, considering the great misgovernance of Eleanor, that was the wife of his late uncle the Duke of Gloucester, hath ordained, by authority of this present Parliament, that the said Eleanor be excluded" from any

part of the said Duke's possessions or estates (1447). This bill did not receive the Royal Assent, since it originated with the King.

Between 1450 and 1500 such royal bills became increasingly common, and began to deal not only with matters of personal concern to the King but of public interest, such as the punishment of traitors, the management of the national finances and the payment of the army. Eventually, the royal origin of such bills was forgotten, and they received the Royal Assent (in the form "Le Roy le veult") exactly as though they had been petitions from the Commons. About 1500, then, there were two types of public bill—the petitionary, which began "Prayen the Commons . . ."; and the non-petitionary, beginning "Forasmuche . . ." or "The King remembering . . ." or simply "Where . . ." (i.e., "Whereas . . ."). In time, the second type superseded the first, and the non-petitionary public bill had become, by the end of the sixteenth century, the normal type for all purposes. The Petition of Right, of 1628, was, I suppose, the last true petitionary public bill.<sup>1</sup>

*Prima facie*, one would have expected the same sort of development to take place in private bills—one would have thought a new class of Royal non-petitionary private bill would have come into existence about 1500. If it had, no doubt it would have superseded the petitionary private bill, as its counterpart did among public bills. And if Henry VIII's private life had been less stormy, possibly this might have come to pass. But Henry VIII, when he came to Parliament, was concerned not with the "misgovernance" of his aunts, but with the adultery and divorce of his Queens and the alteration of the succession to the Throne by declaring his daughters alternately legitimate and illegitimate. Clearly

<sup>1</sup> I have since found a later example, from 1816—an Act for the naturalization, on his marriage to Princess Charlotte of Wales, of Prince Leopold of Cobourg, afterwards King of the Belgians, and Queen Victoria's uncle. It is odd that this, which by mediaeval standards ought to have been a Royal Bill, beginning "The Prince Regent (on behalf of the King's Most Excellent Majesty) remembering . . ." was in fact drafted, I suppose by a misplaced antiquarianism, as a public petition from "We Your loving Subjects. . . ."



these were not suitable subjects for private bills, and it is possibly for this reason that all royal bills remained public bills, and that no class of non-petitionary private bill has arisen. To this day all private bills are petitionary in form—their preamble ends with the words: "May it therefore please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent, etc., etc."

But though many of Henry VIII's private affairs were matters of public concern, it is none the less true that many even of his royal bills were of a purely private character: he promoted, for example, a number of bills to exchange lands with his subjects. And when the Government began to infiltrate into the House of Commons, so that the non-petitionary bills originating there became, not royal bills, but government bills, it continued to be true that many of them were of the nature of private bills.

This did not greatly matter during the seventeenth and eighteenth centuries, when proceedings on public and private bills were in any case not greatly different, and when each House was accustomed to interview every kind of person at the Bar in the normal course of business. In 1728, for instance, when it was proposed to dismiss by a government bill<sup>1</sup> one Thomas Bambridge, Warden of the Fleet Prison, from his post for incompetence and corruption, he was heard by Counsel at the Bar on the Second Reading; two whole days, in fact, were taken up in the Lords by the hearing of Counsel for and against the Bill.

But when, in the nineteenth century, private bills in effect left the floor of the House and were as good as handed over altogether to Committees, it became essential to make some new provision for those government bills, or parts of government bills, that were analogous to private bills. And accordingly such bills began to be termed hybrid bills, and to be treated, during a part of their passage through Parlia-

<sup>1</sup> It may be thought rash to call a bill of this character in 1728 a government bill. But it was at least taken up by the government in its later stages, for the judges were ordered by the Lords to draft a new bill.

ment, in the same way as private bills. They were referred, that is to say, to committees; and the justification for this proceeding was, that just as the work of interviewing the interested parties for and against private bills had been taken over by committees, the House having no longer any time to spare for such work, so the parties interested in those government bills, or parts of government bills, that were private in nature should not be deprived, by this increasing pressure of business on the floor of the House, of the opportunity of being heard, but should appear and state their case before committees.

And that brings us to the present day, when hybrid bill procedure is a matter of topical interest. With the details of procedure I am not concerned, and so I shall pass to consider, purely in the abstract, the nature of hybrid bills and the principles that should, in theory, govern the procedure applicable to them. Our historical conclusions may, I think, be summed up in the following series of propositions:

All private bills are, in form, petitions from outside Parliament to the King in Parliament.

But the King, and the government which is carried on in the King's name, cannot so petition the King.

Therefore the government cannot promote private bills.

But some government bills, or parts of them, are by nature indistinguishable from private bills.

In order to safeguard the private interests affected by them, private bills have to comply with certain Parliamentary requirements.

Therefore such government bills (which are called hybrid bills) should comply with the same requirements.

Now let us see how many sorts of hybrid bills there are. First, there is the "wholly private government bill". The best example of this is the Post Office (Sites) Bill, used by the Post Office to buy up compulsorily various shop sites for post offices. It is not, to my mind, true to say that there is any element of public policy involved in the question whether the post office shall be at No. 44, instead of No. 46

or 42, in the High Street. This therefore is a type of government bill that, if it had not been introduced by the government, would undoubtedly have been simply a private bill. The only thing that differentiates it from private bills is the fact that it is introduced by the government; it is even printed, when passed, among the Private Acts. Further, the use of a government bill for the purpose of acquiring post office premises is to some extent merely the result of fashion in nationalization. The mails, the inland telegraphs and the telephone were all nationalized many years ago, and were, as the fashion then was, incorporated into the Post Office. But the foreign telegraphs, or "cables", were only recently nationalized, and are organized, in the new fashion, as a state corporation. Now suppose the Postmaster-General wanted to buy two sites in the Strand, for inland and overseas telegraph offices; he could obtain the latter by means of a private bill promoted by Cable and Wireless Ltd., the state corporation; but the former he would have to acquire by hybrid bill. Yet surely there would be as much, or rather as little, public policy in the one bill as in the other?

The next class of hybrid bill is the "partly private government bill". And of this class there are, unfortunately, two kinds. The first is the simple kind, where, in a public bill, a clause or two affect named private interests in a particular way. If, for instance, in a bill to compel all golf-courses to be ploughed up and planted with potatoes, there were a clause permitting cabbages to be grown at St. Andrews, and one compelling Brussels sprouts to be grown at Hoylake, then those two clauses, if passed, would make a private law for Hoylake and St. Andrews, singling them out from their fellows and making an exception, in their favour or to their disadvantage, in the general law relating to golf-courses. Those two clauses, therefore, are of the nature of a private bill, and on their account our hypothetical Golf-courses Bill would have to go through certain parts of the procedure appropriate to private bills.

Now there is, unfortunately, a second type of "partly private government bill"; and it is this second sort which

gives rise to controversy. If the government, in the course of the execution of their policy, wish to change the law relating to one or several named individuals or corporations, as by taking over the Bank of England or Cable and Wireless Ltd., or stopping Lord Nelson's pension, then we should at first sight be tempted to say that here is a government bill which is wholly private in nature but which is backed by considerations of public policy. We should be tempted, I say; but I think we ought to resist the temptation. For strictly speaking the three bills I have mentioned above, so far as I have described them, do not fall squarely within the definition of a private bill—there is, as yet, an element missing. We defined a private bill as one which, among other things, altered the law *for the advantage or disadvantage* of one or more named persons or corporations. Now let us suppose that, by some miracle of adjudication, the owners of the Bank of England were perfectly compensated for the nationalization of their Bank—that some form of recompense were found which was, for each of them in every respect, exactly the equivalent of his share in the Bank. Then, if the owners and everyone else agree that their compensation is perfect, the bill is not of the nature of a private bill at all, because it does not propose an alteration of the law for the advantage or disadvantage of any named person or corporation. This line of reasoning will be thought far-fetched, and so of course it is, for even in this case Parliament would still have to satisfy itself that all concerned did agree to the provisions of the bill, and for this purpose would treat the bill, at any rate in its early stages, as though it were of the nature of a private bill. In saying, therefore, that when a bill of this type is agreed to by all concerned it does not partake of the nature of a private bill, I am making a distinction without a difference. But the distinction does at least enable us to see that, in deciding whether and how far a government bill is of the nature of a private bill, we must look mainly at this point, "Does it single out named individuals, companies, etc., from the general run of their fellows, and confer benefits or impose hardships on them?" The great nationalization

## PROCEDURE ON HYBRID BILLS

by W. CRAIG HENDERSON, K.C.

**B**ILLS introduced in the House of Commons belong to one or other of three classes, viz.—Public Bills, Private Bills and Hybrid Bills.

Public Bills are introduced by a Minister or by a Member of the House and relate to matters which affect generally the community as a whole. Private Bills are promoted by persons or bodies outside the House, who lodge petitions asking for legislation to confer on them some special franchise or rights.

Hybrid Bills are introduced in the House, usually by a Minister, but may be introduced by a private Member, and relate to matters affecting the rights of property or the private interests of particular individuals, bodies, or authorities, as distinct from the community generally or from the whole class of the persons or bodies in the category to which those affected by the Bill belong. They are in their nature akin to Private Bills, although in fact they are introduced by Members in the House. They have therefore been properly described in Erskine May's work as "Hybrid or *quasi-private* Bills".

Hybrid Bills may be of very different types. One of the most common type is a Bill by which the Postmaster-General or the Minister of Works seeks to acquire compulsorily land or buildings in private hands as a site to be used for the purposes of his Department. On the other hand, the London Passenger Transport Bill was a Hybrid Bill. Promoted by the Minister of Transport it did not seek to "nationalize" the transport industry of the country but was limited strictly to creating a public authority to take over London passenger transport. The Cable and Wireless Bill is another instance of a Hybrid Bill.

Having regard to the "quasi-private" character of these Bills, it is not surprising to find that there has been a long established practice for the procedure on Hybrid Bills to follow

closely that laid down for Private Bill Legislation. After the first reading, such a Bill is submitted to the Examiners of Petitions for Private Bills for their report whether or not the pertinent Standing Orders have been complied with. If they report non-compliance, their report goes to the Standing Orders Committee who recommend whether or not compliance should be dispensed with. If they recommend that there be no dispensation, the order for the second reading is discharged and the Bill disappears. If Standing Orders are complied with or compliance is dispensed with, the Bill goes to the House for second reading. After second reading, it is referred to a Select Committee, sometimes to a Joint Committee, and persons or bodies whose interests are prejudicially affected may lodge petitions against the Bill.

The main purpose of this article is to discuss the procedure on Hybrid Bills when they come before a Select Committee, as there has been issued very recently the Report of a Select Committee<sup>1</sup> on this subject, containing recommendations which, if adopted, will seriously alter the established practice.

When a Private Bill comes before a Committee, the petitioners against the Bill who have established their *locus standi* are entitled to challenge the whole object of the Bill, and to give evidence tending to show that it is inexpedient in the public interest that the Bill should be allowed to pass. In the case of a Hybrid Bill, the practice has generally been the same. Counsel for the Bill therefore usually opens by expounding the policy, if any, underlying the Bill: but the Select Committee on Procedure now recommend that the second reading should be considered to remove from the promoters the onus of proving the expediency of the Bill unless a special instruction be given by the House referring that question to the Committee, and that petitioners should not have the undisputed right to challenge expediency. It is worth while to consider the line of argument which has led the Committee to adopt this view.

The basis of the argument is that as a Public Bill relates

<sup>1</sup> Report from the Select Committee on Hybrid Bills (Procedure in Committee) together with the Proceedings of the Committee, Minutes of Evidence, and Appendices. H.M.S.O., 3s. net.

to matters of public policy and is introduced by Members of the House, a Hybrid Bill is therefore a Public Bill; and the second reading of a Public Bill decides once and for all on the policy, which cannot thereafter be questioned at the Committee stage. But this strains in its application to many Hybrid Bills the true meaning of "public policy" and overlooks the fact that a Hybrid Bill is, by its very name, distinguished from a true "Public Bill"; and it assumes that on second reading of these Bills, all the facts bearing on expediency are made known to the House, which is certainly not the case.

It may be admitted that the Cable and Wireless Bill, for instance, raised a question of Government policy: but what question of public policy, in the true sense, was raised by the Public Offices (Site) Bill of 1947? Yet in both cases petitioners against the Bill had evidence to bring forward, tending directly to prove that it was inexpedient *in the public interest* to pass the Bill as it stood. In neither case were the facts which these petitioners were prepared to prove made known to the House on second hearing.

By the Public Offices (Site) Bill, the Minister of Works sought to acquire compulsorily the site of the old Westminster Hospital for the purpose of erecting thereon a new building for the Colonial Office. It was, no doubt, selected on account of its proximity to the Houses of Parliament and to other Government buildings, but some other site would have equally served the purpose, and there was no real "public policy" involved in the Bill. Yet the plans for the proposed new building showed that the works would go deep down into the earth and the walls at a great depth would be only seven feet from the wall of the tunnel of the Underground Railway. In these circumstances the L.P.T.B. asked the promoters for a protective clause to be put in the Bill, but the Ministry definitely refused this request: so that the Board were compelled to petition against the Bill and to ask for its *rejection* unless a proper protective clause were inserted. Before the Committee the Minister, when cross-examined, agreed that the Board should have protection, and a clause was thereafter agreed upon and inserted in the Bill as passed. Now, on the

second reading debate not one word was said by anyone about the possible danger to the underground railway except by the Minister in his speech *closing the debate* when, in one sentence, he remarked that the site "raised complications due to the fact that the underground railways tunnels are adjacent". The Board petitioned against the Bill in the public interest, and if protection had been refused, and the deep excavations for the new building would, or might, break down the tunnel wall and so deprive the London public of necessary transport, what other course could a Committee properly adopt than to report against passing the Bill?

On the Cable and Wireless Bill the position was much the same. There was a lengthy debate on second reading, but facts were known to the petitioners, *and to them alone* which, if proved, might well lead Parliament to reconsider the expediency of passing the Bill. Unfortunately, as the Select Committee sits in public, some of these facts showing international difficulties which might arise if the Cables were nationalized, could not be openly mentioned.

Surely the true position is this. In its legislation Parliament should never shut out any evidence and argument which, if accepted, bear directly on the expediency of passing a particular measure. In a "Public Bill", in the true sense, such as the Coal Nationalization Bill or the Electricity Bill, each of which took into Government hands the whole industry, it can be reasonably expected that a second reading debate will disclose all the points bearing on policy; but on a Hybrid Bill that can never be assumed. The particular person or corporation whose property is to be compulsorily taken may have knowledge of facts which are very relevant to the question of expediency but which are unknown to Members of the House and therefore not disclosed in a second reading debate. Can the British Legislature properly refuse to allow a petitioner to disclose those facts, and to relate them to the public interest?

It will be noticed that the argument of the Committee classifies Hybrid Bills as, in the full sense, "Public Bills", as against the classification as "quasi-private" by Erskine May,



who thus lays emphasis on their closer relationship to Private Bills than to Public Bills, and in this matter surely Erskine May, as one would expect, has been right. It will be difficult to find any one, experienced in practice before Parliamentary Committees, ready to accept the recommendation of the Select Committee, and it is interesting to find Sir Alan Ellis, C.B., First Parliamentary Counsel, giving this evidence before the Committee (p. 30): "It appears to me that, where the principle of a Hybrid Bill rests on matters which cannot be assumed to be known to Members, there is risk of injustice unless opponents have, at some stage, an opportunity of impugning its principle on proving undisclosed facts or contraverting facts alleged by the promoter." That expresses the only course to adopt if risk of injustice or of inexpediency is to be avoided in our legislation.

The right of a petitioner against a Hybrid Bill to claim to put forward objections in the public interest is directly challenged by the Chairman of the Select Committee in a series of questions put by him to Sir Alan Ellis, when giving evidence with reference to the Public Works (Site) Bill of 1947 and the Cable and Wireless Bill. The questions and answers are too long to be set out here—they will be found in the Minutes of Evidence at p. 41, Q. 295 to p. 43, Q. 317—but the Chairman's view is at the end summed up and made clear in this Statement in Q. 317 at p. 43:

"The only facts that the petitioner can adduce are the detriment to him. The petitioner surely is in no position to urge or even to assess the value to the community. Quite obviously, the purpose of the Hybrid Bill committee is to enable the petitioner to state his detriment, it is not for him to state the public advantage. That is surely for us in the House of Commons to decide."

This is an astounding statement. In the first place when a Bill is sent to Committee it is the whole Bill and not part only which is so referred. And to say that a person or body entitled to be heard before a Committee of Parliament, and knowing facts not as yet disclosed to Parliament, is not to be allowed on proof of those facts to go on to show that, if

they are accepted, they challenge the whole policy of the Bill, is surely to claim for Members of the House of Commons a position of omniscience on all matters of policy and a freedom from criticism of their proposals for legislation which have never yet been accorded to them. The petitioner is not attempting to criticize an Act of Parliament: he is anxious, on the strength of facts known to him, to show by argument that it is not in the public interest to pass the proposed legislation. If he can do so, how can a Committee with any desire to act really in the public interest refuse to hear those arguments and to give them due consideration, merely because the House, without knowledge of these special facts, has given a second reading to the Bill?

The rule against challenging policy at the Committee Stage on a Public Bill is natural because the whole discussion at that stage is still restricted to Members who could have said all they wanted to say on policy on second reading. But when a Hybrid Bill is sent to Committee, it is referred for the express purpose of hearing those directly affected by the Bill, who have no right of audience in the House, and who may have good reasons for objecting in the public interest to the proposed measure.

More than once in the examination of Sir Alan Ellis, the Chairman suggested that the only concern of the L.P.T.B. on the Public Offices (Site) Bill was compensation for damage done to their railway, and at Q. 301 he said: "Assuming they get adequate compensation, we must assume that it is immaterial to them whether the Bill goes through." This is a strange view when it is remembered that Parliament created the L.P.T.B. and imposed on it the "duty" to "*secure* the provision of an adequate and properly co-ordinated system of passenger transport for the London Passenger Transport Area," and the power to "maintain" its services. The Board would have failed in its duty had it not appeared before the Committee to show the danger *to the public interest* unless proper protection were given for its works. The question of compensation was never discussed. Sir Alan expressed the true position when he said at Q. 295: "I can

so very easily see that it would have been necessary somehow for the committee to bring it about that the Westminster Hospital site should not have been acquired if the result of it would have been the cessation of the Underground Railway"; and that possible result could only be expounded by the Board's representatives, and expounded in the public interest.

The reasoning, therefore, which appears to have led the Select Committee to its main recommendation is entirely unsatisfactory and such statements as are quoted above are open to grave challenge.

Further recommendations of the Select Committee are expressed in the following terms:

- "(2) A petitioner against a Hybrid Bill, who can only be heard by virtue of his *locus standi*, may not argue on matters which cannot give him a *locus standi*;
- (3) Provided that his arguments do not exceed his *locus standi*, a petitioner may traverse the principle of the Bill;
- (4) The limits of the *locus standi* of each petitioner and, therefore, of the arguments which he may properly adduce should be decided, where necessary, by the select committee to which the Bill is committed."

By these recommendations it is intended to restrict severely the scope of argument allowed to a petitioner who is given a *locus standi* to oppose a Hybrid Bill. Such *locus standi* is based on the fact that the petitioner's rights or property are to be compulsorily taken away, and the argument of the Committee is that he should not be allowed to put forward objections which, "if they were the only ones he had to urge, would not entitle him to be heard" (S. 20). But they are not the only ones he has to urge. His rights are to be taken away and he is at present, and should always be, entitled to object to the Bill on any relevant ground which can be linked with the fact that his rights are to be compulsorily usurped or abolished.

On the actual text of recommendations Nos. 2 and 3 above, there should be no change in the present procedure,

for it is the matters which give a petitioner a *locus standi* which entitle him to put forward every relevant argument, including that of expediency: but the text of the Report shows clearly that that is not the intention of the Committee, who desire that rights hitherto granted to petitioners should now be taken away.

Finally, the fourth recommendation would leave it to the select committee to decide on the "limits of the *locus standi*" to be allowed to petitioners, i.e., to restrict the scope of evidence and argument to be allowed to a petitioner. No one with practical experience of the work before such committees will be found to approve of such a proposal. It would lead to a waste of time, as more time would be occupied, in many cases, in hearing arguments for and against the *right* to raise the issue of policy than would be required to hear and dispose of the actual contentions on policy, and as on Hybrid Bills promoted by a Minister the Government Members are always in a majority on the committee, there would be no assurance that a decision against a petitioner's claim to be heard on expediency, in the public interest, would be unbiased; whereas, if the committee is bound to hear such arguments, the petitioner can feel, even if the decision is adverse, that he has had a full and fair hearing. It is vital that Members of Parliament who sit on committees should realize how important that aspect of the matter is. If ever any question of restricting the limits of discussion to be allowed to petitioners against a particular Bill had formally to be decided, that should be done by Mr. Speaker.

It is earnestly to be hoped that the House will not accept these recommendations.<sup>1</sup>

<sup>1</sup> On the 14th February, the House of Commons approved by 204 votes to 89 the recommendation contained in the report, subject to the qualification that a Bill against which no petition has been lodged may be committed either to a committee of the whole House or to a Standing Committee, and the Select Committee stage dispensed with.

## CONSTITUTIONS OF THE BRITISH COLONIES

Information prepared by SYDNEY D. BAILEY

with a prefatory note

by the Rt. Hon. A. CREECH JONES, M.P.

*(Secretary of State for the Colonies)*

*Sir John Seeley said that Britain acquired her Empire in a fit of absentmindedness. There are critics to-day who allege that British administration in the Colonies suffers from lethargy and negligence for much the same reason. But at no previous time was there a livelier interest in colonial welfare and development or were colonial administrations more conscious of their problems and more anxious to carry forward the plans for the economic, social and political development of their territories. It is to some extent true that British colonial policy does not fall into a neat pattern, because of the great variety of conditions and stages of development in the territories. Nevertheless there are consistent principles of growth—the establishment of orderly administration and even justice, the movement to self-government and responsibility and the creation in London of central services of immense importance for colonial advance.*

*The approach in the nature of things must, however, be empirical. My work brings me into touch with units of the Colonial Empire varying in size from Tanganyika, with an area of about 350,000 square miles, to the tiny Cocos-Keeling Island with an area of  $1\frac{1}{2}$  square miles. Nigeria has 22,000,000 inhabitants; Pitcairn Island has a population of about 100. In the Colonies are Christians and Jews, Hindus and Moslems, Buddhists and Confucianists, animists, agnostics and atheists. Parts are highly industrialized, parts are used mainly for agriculture, parts consist almost entirely of jungle and desert. Living in the Colonies are Dukes and dustmen; scholars, scientists and saints; rich men, poor men, beggars and thieves.*

*In spite of this diversity, the Colonies are all progressing, though at varying speeds, towards self-government. Political responsibility depends less on the creation of the right institutions and machinery of government but more on the experience and enlightenment of the peoples,*

*their conception of social responsibility and public duty, the spirit of tolerance and integrity brought by them to public life, and the establishment of the tradition of service. Constitutional changes are accordingly taking place all the time, a constant evolution from stage to stage—legislatures becoming more representative, executive councils passing to “cabinet” form with responsibility to the legislature, plural societies moving to common citizenship, authority being steadily devolved from London to the Colonial government, and organs of municipal and local government growing in functions and responsibility as the central territorial government develops. Because of this constant and accelerating process, it is difficult to set down at any given moment the stage in political progress reached in the respective territories. The following summaries of the constitutions of the colonial territories will, however, be useful not only to students of comparative government, but to civil servants, politicians and others who are concerned with the day to day working of the various organs of government in the Colonies.*

*A. Creech Jones.*

**B**Y a series of historical and geographical accidents, England, the Mother of Parliaments, has no single document known as the Constitution. There are three main sources from which the Constitution is drawn—Statute Law (Acts of Parliament), Common Law (decisions of the Courts), and the unwritten Conventions of the Constitution. Because the Constitution has never been expressed in one document, it is relatively easy to change it to meet new circumstances.

This changing nature of the Constitution is so well known as to require no emphasis. What is not so often realized is that the Constitutions of the British Colonies are also constantly changing.

It is the purpose of this and succeeding papers to summarize the constitutional position in each of the British Colonies. It is hoped that these summaries will be useful to scholars, civil servants, and others whose work brings them into touch with governmental institutions in the Colonies.

Two words of caution are necessary. First, the need to